

ADMINISTRATIVE-INTERNAL USE ONLY

FILE

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1 MAR 77 HR 434

MEMORANDUM FOR: Legislative Counsel

FROM : Robert W. Gambino
Director of Security

VIA : Deputy Director for Administration

SUBJECT : H. R. 434

1. On 4 January 1977, Congressman Koch introduced H. R. 434 (Attachment A) in the House of Representatives. The Bill would prohibit "the use of the polygraph for certain purposes."

2. Congressman Koch has sponsored identically worded Bills in 1971 (H. R. 9783) and in 1975 (H. R. 564).

3. As I interpret this bill, it would severely restrict, if not entirely eliminate the polygraph program of this Agency. In support of this Bill, Congressman Koch stated that exceptions to a prohibition on the use of polygraphs, even in cases clearly involving the Nation's security, should not be allowed. (Congressional Record, 8 February 1977, H-959)

4. In a 25 February 1976 letter to Congresswoman Abzug (Attachment B), Mr. Bush, DCI, stated that the polygraph was a necessary part of security processing at CIA. He discussed its value and its reliability, and he described precautions taken which prevent abuses and protect the rights of those taking the examinations. The DCI concluded that, "Termination of the Agency's polygraph program would increase its vulnerability to hostile penetration and would seriously impact on the Agency's effectiveness in carrying out its foreign intelligence collection mission."

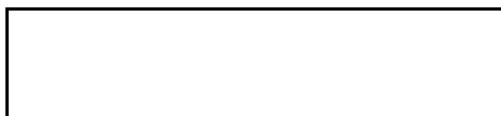
5. The polygraph has been and will continue to be used by the Agency without jeopardizing the constitutional rights of citizens of the United States and without

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OS-7-0725

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unwarranted invasion of their privacy. I, personally, am aware of the contribution that the polygraph has made to the security of both the Agency and the Nation. I strongly recommend that the Agency oppose passage of H. R. 434.



Robert W. Gambino

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OS/PSI/SSD/PB [REDACTED] (23 February 1977)

AT

ADMINISTRATIVE-INTERNAL USE ONLY

95TH CONGRESS
1ST SESSION

H. R. 434

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 1977

Mr. KOCH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To protect the constitutional rights of citizens of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of the polygraph for certain purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. It shall be unlawful for any officer or em-
4 ployee of any executive department or agency or any indi-
5 vidual acting under the authority of such officer and employee
6 to do the following:

7 (a) to permit, require, or request, or to attempt to
8 require or request, any officer or employee of the United
9 States, or any individual applying for employment as an

1 officer or employee of the United States, to take any
2 polygraph test in connection with his services or duties as
3 such officer or employee, or in connection with such indi-
4 vidual's application for employment;

5 (b) to deny employment to any individual, or to
6 discharge discipline, or deny promotion to any officer or
7 employee of the United States, or to threaten to commit
8 any such act by reason of his refusal or failure to submit
9 to such requirement or request.

10 SEC. 2. It shall be unlawful for any person engaged in
11 any business or other activity in or affecting interstate com-
12 merce, or any individual acting under the authority of such
13 person to do the following:

14 (a) to permit, require, or request, or to attempt to
15 require or request any officer or employee employed by
16 such person or any individual applying for employment
17 in connection with such business or activity to take any
18 polygraph test in connection with his services or duties
19 or in connection with his application for employment.

20 (b) to deny employment to any individual, or to
21 discharge, discipline, or deny promotion to any officer
22 or employee employed in connection with such business
23 or activity, or to threaten to commit such act by rea-
24 son of his refusal or failure to submit to such require-
25 ment or request.

1 SEC. 3. Whoever willfully violates or willfully attempts
2 to violate any of the provisions of this Act shall be guilty of
3 of a misdemeanor, and, upon conviction, shall be punished
4 by a fine not exceeding \$1,000, or by imprisonment not
5 exceeding one year, or by both such fine and imprisonment.

6 SEC. 4. (a) Whenever—

7 (1) any officer or employee of any executive de-
8 partment or any executive agency of the United States
9 Government, or any person acting or purporting to act
10 under his authority, or

11 (2) any commissioned officer as defined in section
12 101 of title 10, United States Code, or any member
13 of the Armed Forces acting or purporting to act under
14 his authority, or

15 (3) any person engaged in any business or other
16 activity in or affecting interstate commerce, or any in-
17 dividual acting under the authority of such person,
18 violates or threatens to violate any of the provisions of sec-
19 tion 1 or 2 of this Act, any employee or officer of the United
20 States, or any person applying for employment in the execu-
21 tive branch of the United States Government, or any person
22 seeking to establish civil service status or eligibility for
23 employment in the executive branch of the United States
24 Government, or any individual applying for employment in

1 ing interstate commerce, or any employee or officer employed
2 by a person engaged in such business or activity, who is
3 affected or aggrieved by the violation or threatened violation,
4 may bring a civil action in his own behalf or in behalf of him-
5 self and others similarly situated, against the offending officer
6 or employee or person in the United States District Court for
7 the district in which the violation occurs or is threatened, or
8 for the district in which the offending officer or person is
9 found, or in the United States District Court for the District
10 of Columbia, to prevent the threatened violation or to obtain
11 redress against the consequences of the violation.

12 (b) Such United States district court shall have juris-
13 diction to try and determine such civil action irrespective of
14 the actuality or amount of pecuniary injury done or threat-
15 ened, and without regard to whether the aggrieved party
16 shall have exhausted any administrative remedies that may
17 be provided by law, and to issue such restraining order, inter-
18 locutory injunction, permanent injunction, or mandatory
19 injunction, or enter such other judgment or decree as may be
20 necessary or appropriate to prevent the threatened viola-
21 tion, or to afford the plaintiff and others similarly situated
22 complete relief against the consequences of the violation.

23 (c) With the written consent of any person affected or
24 aggrieved by a violation or threatened violation of section
25 1 or 2 of this Act, any employee organization may bring

1 such action on behalf of such person, or may intervene in
2 such action. For the purposes of this section, employee or-
3 ganizations shall be construed to include any brotherhood,
4 council, federation, organization, union, or professional orga-
5 nization made up in whole or in part of employees and which
6 has as one of its purposes dealing with departments, agencies,
7 commissions, independent agencies of the United States, or
8 with businesses and industries engaged in or affecting inter-
9 state commerce, concerning the conditions and terms of em-
10 ployment of such employees.

95TH CONGRESS
1ST SESSION

H. R. 434

A BILL

To protect the constitutional rights of citizens of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of the polygraph for certain purposes.

By Mr. KOCH

JANUARY 4, 1977

Referred to the Committee on the Judiciary

TAB

76-0273/a

Honorable Bella S. Abzug, Chairwoman
Subcommittee on Government Information and
Individual Rights
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

25 FEB 1976

Dear Madame Chairwoman:

This is in reply to your letter of 29 January 1976 submitting a copy of the report of the Committee on Government Operations, House Report 94-795, entitled "The Use of Polygraph and Similar Devices by Federal Agencies" and requesting certain comments concerning the Agency's continued use of the polygraph.

If legislation was enacted to prohibit the use of the polygraph by all government agencies for all purposes as recommended on page 46 of the report, it would seriously impair the Director of Central Intelligence from complying with his statutory responsibility under the National Security Act of 1947. I refer to Section 102(d)(3) of the Act which makes the Director responsible for the protection of intelligence sources and methods from unauthorized disclosure. An effective personnel security program is vital to assure this protection.

AT The polygraph is an integral and essential part of security processing to determine the security eligibility of persons for Agency employment. [redacted] As statistics illustrate, during the period 1963 through mid-1974, of those applicants for employment rejected on security grounds, over 60 percent were rejected on the basis of information developed principally or solely during polygraph interviews. In a sampling of recent records, about half of the applicants who had been disapproved on the basis of information developed during polygraph interviews had already completed all other security screening and been provisionally approved on this basis. Without the polygraph program, the disqualifying information on these cases would have remained unknown. In addition, it is reasonable to presume that the program is a significant deterrent to application for employment by unsuitable candidates, and more importantly, penetration attempts by foreign intelligence services.



The utility of CIA's polygraph program is not solely a function of its part in contributing information leading to the rejection of unsuitable candidates. The preponderance of polygraph interview reports are favorable. Most of these favorable reports constitute useful and comforting confirmation of other screening procedures; the remainder represent favorable resolutions of allegations or suspicions which otherwise could result in injustices or in unnecessary defensive measures.

The Central Intelligence Agency has consistently urged continuance of its polygraph program in its reports to congressional committees on proposed legislation and hearings concerning the polygraph. We note in the Dissenting Views of your report, on page 56, that on 25 March 1975, based on the hearings held in 1974, that the Subcommittee initially approved a recommendation which would have prohibited the use of the polygraph in all but cases involving national security and for law enforcement purposes provided fifth amendment rights under the Constitution were not violated. This concern for national security was recognized by former Senator Sam Ervin, a strong advocate of individual rights, though he otherwise objected to the use of the polygraph. In his proposed legislation to protect the personal privacy of government employees, introduced during several Congresses prior to his retirement from public office, Senator Ervin expressly excepted the CIA and the National Security Agency from the provision barring the use of the polygraph in Government. Senator Ervin's last bill was S. 1688, Senate Report 93-724, which passed the Senate 7 March 1974.

The CIA is cognizant of the danger of abuse inherent in the use of any instrument used to aid in distinguishing truths from untruths. Consequently, we have adopted strict procedures to prevent abuses and to protect those taking the examination. These include:

- notification to each applicant for employment at the time he is given an application form of the intent to use a polygraph examination in the course of his employment processing;

- coordination with the Office of Personnel and the Office of Medical Services to determine if a polygraph interview is advisable;

- advance written consent of the applicant;

- notification of the privilege against self-incrimination on questions pertaining to violations of criminal law;

- limiting questions to those exclusively related to security issues;

- informing the applicant that the examination may be monitored and possibly recorded to let him know there are no hidden procedures;

- random monitoring by a specialized supervisor to insure that no improper questions are asked;

- maintenance of polygraph records in separate files with very strict need-to-know rules governing access;

- prohibition of release of polygraph-acquired information outside the Agency without my approval or that of the Deputy Director and only if such a release is necessary in the interest of national security;

- the polygraph examiner makes no recommendation as to the security suitability of the person tested; and

- evaluation of the polygraph report is but one element in the total personnel security screening program.

With respect to reliability, defined in accordance with scientific convention as the consistency of the interpretations of the polygraph charts, agreement studies were conducted as part of an Agency research program which was initiated partially in response to the hearings held by the Foreign Operations and Government Information Subcommittee in the early 1960's. Numerical results of these studies are complex and would require extensive explanation, but comparisons may be useful. Comparable studies of similar professional groups are scarce but two were found, involving cardiologists evaluating EKG charts for cardiac pathology and psychologists evaluating MMPI test results for psychopathology. The CIA polygraphers' chart interpretations were as good as or better than these two groups.

Finally, the selection of polygraph officers is extremely discriminating as to their qualifications, intelligence, integrity, and high character. They are given a rigorous training program which is a continuing process to keep them abreast of developments in their professional field. CIA has maintained a vigorous research effort inquiring into new techniques and equipment to insure that the highest standards are maintained.

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In view of my statutory responsibility to protect intelligence sources and methods and the proven reliability of the polygraph and the safeguards in its utilization, I must disagree with the recommendation of the Committee. This Agency's personnel security standards must be maintained at the highest levels. Termination of the Agency's polygraph program would increase its vulnerability to hostile penetration and would seriously impact on the Agency's effectiveness in carrying out its foreign intelligence collection mission.

Sincerely,

/s/ George Bush

George Bush
Director

cc:

Chairman, House Government Operations Committee.

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AT OLC/PLC/dlw [redacted] (20 Feb. 1976)

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